

TENTATIVE RULINGS for CIVIL LAW and MOTION

June 25, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **Masland Carpets v. Pearson**

Case No. CV G 09-1508

Hearing Date: **June 25, 2010** **Department Fifteen** **9:00 a.m**

Thomas and Claudia Pearson's amended declarations, filed on June 17, 2010, do not contain a proper jurat. (Code Civ. Proc., § 2015.5.) Even if the Court considers the defendants' amended declarations, the defendants admit that they "received service of process for the Plaintiff's current complaint on June 30, 2009." (Thomas Pearson Declaration ¶ 2; Claudia Pearson Declaration ¶ 2.) Accordingly, the motion based on Code of Civil Procedure section 473.5 is **DENIED**. The amended declarations do not state facts that establish mistake, inadvertence, surprise, or excusable neglect that justify relief. It appears that the defendants neglected to read the summons. They did so at their own peril. (*Davis v. Thayer* (1980) 113 Cal.App.3d 892, 906.) The motion based on Code of Civil Procedure section 473, subdivision (b) is also **DENIED**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Northern California Collection Service, Inc. v. Russell**

Case No. CV G 09-2489

Hearing Date: **June 25, 2010** **Department Fifteen** **9:00 a.m**

Charles Russell's unopposed motion to set aside the entry of default is **DENIED WITHOUT PREJUDICE**. Defendant did not submit a copy of his proposed answer or other pleading with his motion for relief. (Code Civ. Proc., § 473, subd. (b).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Ochoa v. Diablo Funding Group, Inc. et al.**
Case No. CV CV 09-2398

Hearing Date: **June 25, 2010** **Department Fifteen** **9:00 a.m.**

Defendant JP Morgan Chase Bank, N.A. et al.'s Demurrer:

Defendant JP Morgan Chase Bank, N.A. et al.'s demurrer to plaintiffs' complaint is **SUSTAINED IN PART AND OVERRULED IN PART**. (Code Civ. Proc., § 430.40.)

Defendants' demurrer to the first and second cause of action for fraud is **SUSTAINED WITH LEAVE TO AMEND**. Plaintiff fails to state facts sufficient to show when he discovered the fraud and his efforts to discover the fraud. Plaintiff fails to state what specific violation is apparent on the face of the disclosure statement. (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157; 15 USCS §§ 1640(e) & 1641(e)(1),(2); *King v. State of California* (9th Cir. 1986) 784 F.2d 910, 915.)

Defendants' demurrer to the third cause of action for fraud is **OVERRULED**. (Code Civ. Proc., § 430.40.) Plaintiff states facts sufficient to state a cause of action for fraud.

Defendants' demurrer to third and fourth causes of action for negligence is **SUSTAINED WITH LEAVE TO AMEND**. A plaintiff fails to states facts sufficient to show that defendant's actions exceeded the scope of its traditional role as lender (*Nymark v. Hart Federal Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.)

Defendants' demurrer to the sixth cause of action for unfair business practices is **OVERRULED**. (Bus. & Prof. Code, §§ 17200 *et seq.*; *Gibson v. World Savings and Loan* (2002) 103 Cal.App.4th 1291.)

Plaintiff's objection to Defendant's request for judicial notice is **SUSTAINED IN PART**. (Evid. Code, §452, subd. (c).) The Court takes judicial notice of the existence of the documents only. (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1145.)

Defendant's request for judicial notice is **GRANTED**. (Evid. Code, § 452.) The Court takes judicial notice of the existence of the documents but does not take notice of the facts contained therein. (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1145.)

Defendants Tom Sells et al.'s Demurrer:

The demurrer is **SUSTAINED WITH LEAVE TO AMEND**. (Cal. Rules of Court, rule 2.112.) Plaintiff failed to identify which causes of action are asserted against these defendants.

Defendant California Reconveyance Company's Demurrer:

The demurrer is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., §430.10, subd. (e).) Plaintiff cannot state facts sufficient to state a cause of action against this defendant as a matter of law. A trustee under a deed of trust has neither the powers nor the obligations of a strict trustee; rather, he serves as a kind of common agent for the trustor and the beneficiary. (*Hatch v. Collins* (1990) 225 Cal.App.3d 1104, 1111.) A trustee's agency is a passive one, for the limited purpose of conducting a sale in the event of the trustor's default or reconveying the property upon satisfaction of the debt. (*Id.*)

Plaintiff shall file an amended complaint by **July 8, 2010**. Defendants shall file their answers or other responsive pleadings by **July 29, 2010**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Ramcon Engineering & Environmental Contracting, Inc. v. Victory Enterprises, Inc., et al.**
Case No. CV G 08-2726

Hearing Date: **June 25, 2010** **Department Fifteen** **9:00 a.m.**

Defendants' request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).) Plaintiff's request to take notice of Exhibit 7 to the request filed on June 7, 2010, is **GRANTED**. (Evid. Code, § 452, subd. (c).) All other requests for judicial notice are **DENIED**.

The evidentiary objections to the Declaration of Daniel Martinez are **SUSTAINED**.

Defendants' motion to set aside the entry of default and default judgment is **GRANTED**. (Code Civ. Proc., § 473.5.)

Defendants' motion to quash the service of summons on Thomas Berthold is **GRANTED**. (Code Civ. Proc., §§ 415.20 and 418.10, subd. (a).) Plaintiff has not established that substitute service on Mr. Berthold was effected only after reasonable attempts to personally serve him failed. Plaintiff has not established that the address where substitute service was made was Mr. Berthold's dwelling house, usual place of abode, usual place of business, or usual mailing address.

Defendants' motion to quash the service of summons on Victory Enterprises, Inc. is **DENIED**. (Code Civ. Proc., §§ 416.10 and 415.20.) Mr. Berthold states that he is the president of Victory Enterprises, Inc. (Berthold Declaration ¶ 2.) Summons was served on Mr. Berthold, as agent for Victory Enterprises, Inc. Mr. Berthold was served by substitute service at Mail Service International, which Mr. Berthold states is where he receives documents for Victory Enterprises, Inc. (Berthold Declaration ¶¶ 8-9; Parish Declaration ¶ 2.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.